BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. GARDEN GROVE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060736 ORDER GRANTING MOTION TO DISMISS

On June 18, 2013, Student filed a request for due process hearing (complaint), naming the Garden Grove Unified School District (District) as the respondent.

On June 28, 2013, the District filed a Motion to Dismiss Student's complaint, alleging that Student's first issue is barred by res judicata/collateral estoppel and the second issue is outside the jurisdiction of the Office of Administrative Hearings (OAH) in a special education due process proceeding.

OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education [FAPE] to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504), Section 1983 of Title 42 of the United States Code, the Americans with Disabilities Act (ADA), or state civil rights laws.

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their agents from relitigating issues that were or could have been raised in that action. (*Allen v. McCurry* (1980) 449 U.S. 90, 94 [101 S.Ct. 411, 66 L.Ed.2d 308].)

Collateral estoppel requires that the issue presented for adjudication be the same one that was decided in the prior action, that there be a final judgment on the merits in the prior

action, and that the party against whom the plea is asserted was a party to the prior action. (See 7 Witkin, California Procedure (4th Ed., Judgment § 280 et seq.) Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. (*Ibid*.; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341; see also *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, n. 1 [104 S.Ct. 892, 79 L.Ed.2d 56] [federal courts use the term "issue preclusion" to describe the doctrine of collateral estoppel].)

The doctrines of res judicata and collateral estoppel serve many purposes, including relieving parties of the cost and vexation of multiple lawsuits, conserving judicial resources, and, by preventing inconsistent decisions, encouraging reliance on adjudication. (*Allen, supra*, 449 U.S. at p. 94; see *University of Tennessee v. Elliott* (1986) 478 U.S. 788, 798 [106 S.Ct. 3220, 92 L.Ed.2d 635.) While collateral estoppel and res judicata are judicial doctrines, they are also applied to determinations made in administrative settings. (See *Pacific Lumber Co. v. State Resources Control Board* (2006) 37 Cal.4th 921, 944, citing *People v. Sims* (1982) 32 Cal.3d 468, 479; *Hollywood Circle, Inc. v. Department of Alcoholic Beverage Control* (1961) 55 Cal.2d 728, 732.)

In *Nevada v. United States* (1983) 463 U.S. 110 [103 S.Ct. 2906, 77 L.Ed.2d 509], the United States Supreme Court stated that "the doctrine of *res judicata* provides that when a final judgment has been entered on the merits of a case, '[it] is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' [citation omitted]." (*Id.* at pp. 129-130, italics in original.) In other words, res judicata also precludes the use of evidence that was admitted, or could have been offered, at a prior proceeding.

However, the IDEA contains a section that modifies the general analysis with regard to res judicata and collateral estoppel under some circumstances. The IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not.

A party aggrieved by the findings and decision in a due process hearing may appeal to a competent court of jurisdiction within 90 days of receipt of the hearing decision. (Ed. Code, § 56505, subd. (k).)

DISCUSSION

This case is the most recent in a series of due process cases filed regarding this Student. The current complaint was filed by Student against the District and alleges two issues for hearing: 1) "Whether [Student] is entitled to reimbursement of the costs for his private educational services for the 2011-2012 school year and Extended School Year when the District failed to offer and provide procedural and substantive FAPE;" and 2) "Whether the District's denial of FAPE for [Student] resulted in denials of his rights under Section 504, ADA, and State civil rights laws."

Student's second issue is easily addressed – OAH does not have jurisdiction over claims arising under Section 504, the ADA, or state civil rights laws. Dismissal of that issue is appropriate, and it is hereby dismissed.

Student's first issue is somewhat confusing because it focuses on Student's requested remedy (reimbursement), but does not specify how the District allegedly denied Student a FAPE. The underlying factual allegations shed more light on the basis for Student's case. According to those factual allegations, Student brings the action based on the individualized education program (IEP) offer made in May and June 2011. Student objects to the placement offered in the District's May/June 2011 IEP, the IEP goals, the transition plan, the accommodations, and the lack of opportunity for Student's guardian to participate in the meetings. (At the time of the 2011 IEP meetings, Student was under 18 years old and his guardian represented his interests.) Student alleges both procedural and substantive violations related to these objections.

The District contends that Student's first issue is barred by res judicata/collateral estoppel based on a prior OAH case and should therefore be dismissed.

The District is correct. All of the objections Student raises in the instant case regarding the May/June 2011 IEP offer were heard and decided in a prior case before OAH. In OAH consolidated case number 2011060840/2011100955, one of the issues for hearing was: "Did the District's proposed IEP of May 5, 2011, and June 23, 2011, offer Student a FAPE in the least restrictive environment?" That case went to hearing on June 5, 6, 7, 11, 12, 13, and 14, 2012. A written decision was issued on July 30, 2012. The District prevailed on all issues heard and decided in that case.

Student and his guardian were parties to that prior case. On the first day of the hearing, Student was represented by his guardian. On the second day of hearing, he turned 18 years old and he authorized his guardian to act as his "attorney-in-fact" with the power to make educational decisions on his behalf. Student and his guardian were represented by legal counsel during the hearing.

The evidence introduced at that hearing and the decision rendered in that case specifically addressed the appropriateness of the May/June 2011 IEP, including the placement offered, the IEP goals, the transition plan, the accommodations, and the

opportunity of Student's guardian to participate in the IEP meetings. The decision found no denial of FAPE with respect to any of these issues and concluded that the May/June 2011 IEP offered Student a FAPE both procedurally and substantively.

That prior decision was made on the merits of the case and was final as of the day it was issued on July 30, 2012. According to Student's moving papers, Student has filed an action in the United States District Court to appeal that decision.[1]

All the elements of res judicata/collateral estoppel are met. The issues heard and decided in the prior proceeding were the same as those alleged in the instant case. A decision on the merits was rendered. The instant case involves the same parties or individuals in privity with the parties to that earlier case. (See *People v. Garcia* (2006) 39 Cal.4th 1070, 1077 – 1078.)

Even Student recognizes that Student is seeking to relitigate that prior case. In Student's current complaint, Student mentions the prior case and alleges that the District failed to meet its burden of proof in the prior hearing. Contrary to Student's allegations, the prior decision specifically found that the District met its burden to prove that the May/June 2011 IEP was appropriate, both procedurally and substantively.

The only new issue Student raises in the instant case involves Student's requested remedy (whether Student's guardian is entitled to reimbursement for expenses incurred in sending Student to a private school). However, a parent or guardian is only entitled to reimbursement of expenses if the school district did not offer a FAPE to the pupil. (See *School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359 [105 S.Ct 1996, 85 L.Ed.2d 385].) Because the final decision on the merits in the prior action found that the District offered Student a FAPE, Student's guardian is precluded from obtaining any reimbursement in the instant case.

Student's first issue is barred by the doctrine of res judicata/collateral estoppel and it is hereby dismissed.

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[1] California and federal law differ regarding the correct procedure to use to halt the second case when an appeal is pending on the first case. (See 7 Witkin, California Procedure, (5th ed. 2008) Judgment, § 364, pp. 986 - 987.) In California, while an appeal of the first case is pending, a party is generally required to file a "plea in abatement" in the second case rather than rely upon res judicata, while in federal court, res judicata may be raised as a defense during the pendency of an appeal. Student's complaint did not give any details regarding the alleged appeal, and Student did not file an opposition to the District's Motion to Dismiss, so it is not certain what the current status of that appeal might be.

Special education due process cases arise under both state and federal law. No matter which procedure (plea in abatement or res judicata motion) applies to this special education due process proceeding, the result is the same – the instant case seeks to relitigate the same issues as the prior case, and it should not go forward at this time.

ORDER

The District's Motion to Dismiss is granted. The matter is hereby dismissed.

Dated: July 9, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings